

General Order

Houston Police Department



ISSUE DATE:

February 25, 2020

NO.

600-21

REFERENCE: This newly created General Order supersedes all prior conflicting Circulars, Directives, and General Orders

SUBJECT: PUBLIC RECORDING OF POLICE ACTIVITY

POLICY

The Houston Police Department recognizes that members of the general public have a First Amendment right to video record, photograph, and/or audio record officers of the Houston Police Department in any public setting.

This General Order applies to all employees.

DEFINITIONS

Common Areas of Public & Private Facilities. Property that is open or accessible to the public for a particular purpose (e.g. areas intended for public use at a shopping mall, office building, hospital, parking lot).

Interference with Public Duties. A law prohibiting the interruption, disruption, or interference with a peace officer performing a duty or exercising authority imposed or granted by law as provided in section 38.15 of the Texas Penal Code.

Media. The storage source for visual images and/or audio recordings, whether by film, analog, or digital means.

Police Activity. For purposes of this General Order, officers conducting official business, acting in an official capacity, wearing a department issued uniform, wearing indices of the police department (e.g. wearing police identification) or who are otherwise readily identifiable as an officer.

Public Setting. Any place to which the public has a legal right to access and includes, but is not limited to, parks, sidewalks, streets, locations of public protest, and any other public facility. This also includes common areas of public and private facilities.

Recording or Record. For the purposes of this general order, recording or record is the act of capturing still or moving image(s), audio, or both by means of a recording device.

Recording Device. Any device utilized to capture still or moving image(s), audio, or both. Examples include, but are not limited to, a camera, cellular telephone, audio recorder, video recorder, tablet-style mobile computer, or other similar device.

1 RECORDING IN GENERAL

Officers are reminded that recording of places, buildings, structures and events are common and normally lawful activities. If a person is recording from a place where he or she has a legal

right to be, officers are reminded that this activity by itself does not constitute suspicious conduct.

Additionally, persons in private locations where they have a legal right to be present such as their home or place of business have a First Amendment right to record police activity.

However, the fact that a person has a recording device or is recording does *not* entitle the person to do any of the following:

- a. Cross a police line
- b. Enter an area that is closed to the public
- c. Enter any area designated as a crime scene
- d. Trespass
- e. Interfere with public duties (See section 4, Limitations)

Officers shall understand that if a person moves to a public sidewalk, then trespassing does not apply.

2 RECORDING CRITICAL INFRASTRUCTURES INCLUDING POLICE FACILITIES

The recording of critical infrastructures or secure locations such as water treatment plants, chemical manufacturing facilities, government buildings or police and military facilities may raise security and terrorism concerns; however, an officer must have reasonable suspicion to believe the person may be committing or is about to commit a criminal offense before the officer may detain the person or have probable cause to believe that a crime was committed to arrest the suspect.

Officers must be able to articulate the reason the person's behavior amounts to reasonable suspicion that the person is committing a crime or is about to commit a crime. For purposes of reasonable suspicion, it is appropriate for officers to take into account the location of the suspicious conduct and the degree of the potential danger being investigated; what is not suspicious in one location may be highly suspicious in another.

There is nothing that prevents an officer from engaging in a consensual conversation with any person. When officers enter into a consensual encounter, officers must understand that the person may refuse to talk or walk away. Officers must be able to recognize and articulate how a consensual conversation or casual interaction may turn into a lawful detention. For documentation within an incident report, officers should gather as much consensual information as the person will provide and detail all observations about the person(s) and scene descriptors, including observable vehicular information.

Police Facility or other Public Facility

While recording alone is not prohibited, a person engaged in recording is not entitled to trespass or violate other laws. While the public may be permitted to enter a premises or

building for a particular purpose, this right is not absolute. For example, the waiting area of a police station is open to the public to conduct business, but if the person creates a disturbance, the person's behavior creates a concern for safety, or the person is otherwise not conducting any business for which the facility is used, the person may be asked to leave. A person with apparent authority to act for the owner must provide oral or written communication that the person trespassing must leave the premises.

Where the involved property is maintained by the Houston Police Department, the commander over the division which occupies or is in charge of the property, facility or area, or the on-duty Night Command supervisor will determine if the person has permission to remain on the property. A person may be asked to leave a police facility if the person is not conducting any business at the police facility.

If the person refuses to leave the facility, officers may detain the suspect while further investigating the incident and determining if any charges will be filed. Any detention must be limited in duration to that which is reasonably necessary to investigate the incident. Officers must be able to articulate reasonable suspicion why the person's behavior or actions required them to detain the person.

3 PROCEDURES TO BE FOLLOWED BY OFFICERS

As long as the recording of police activity takes place in a setting where the individual has a legal right to be present and does not interfere with an officer's safety or lawful duties, officer's shall *not* do any of the following:

- a. Detain the person recording.
- b. Inform or instruct the person that recording is not allowed, requires a permit, or requires the officer's consent.
- c. Order that person to cease recording.
- d. Demand that person's identification.
- e. Demand the person state a reason why he or she is recording.
- f. Intentionally block or obstruct recording devices.
- g. Threaten, intimidate, or otherwise discourage the person from recording.

Regardless of the situation, officers shall not erase or delete, or instruct or require a person to erase or delete any media.

Nothing in this policy prohibits officers from questioning or detaining individuals they reasonably suspect have committed, are committing, or are about to commit any crime.

4 LIMITATIONS

Interference with Public Duties

Officers are reminded that pursuant to Texas Penal Code section 38.15(a)(1), "a person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law."

However, a person's recording of police activity from a safe distance, and absent any attendant action that obstructs the activity or threatens the safety of the officers, does *not* constitute interference.

A person has the right to express criticism of the police activity being observed. Officers are reminded that a person's expression does *not* constitute interference as long as such expression does *not* do either of the following:

- a. Jeopardize the safety of any officer, suspect or bystander.
- b. Incite others to violate the law.

If a person is recording police activity from a position that interferes with the safety of officers or their ability to perform their duties, if reasonable to do so, an officer may direct the person to move to a position that will not interfere. However, an officer shall not order the person to stop recording.

Obstructing Highway or Other Passageway

If a person is recording police activity from a position that obstructs a highway or other passageway (e.g.; street, sidewalk) by rendering it impassable or unreasonably inconvenient or hazardous, the officer shall direct the person to move to a safe position before making an arrest. For example, depending on the circumstances, directing a person that is recording to move out of the street and onto a sidewalk for their safety may be reasonable. However, officers shall not order the person to stop recording.

5 EVIDENCE ON A RECORDING DEVICE AND/OR MEDIA

Requesting Consent

If there is a question of whether a recording device and/or media contain evidence, the officer may request consent from the person to allow the officer to listen to or view the recording on their device and/or media.

If an officer has probable cause to believe that a recording device or media contains evidence, the officer may request consent from the person to either:

- a. Relinquish the recording device and/or media to the officer to be tagged in the Property Division.

- b. Transmit the images or sound via electronic mail to the officer's official government electronic mail account or upload the images or sound onto a government device when possible and practicable and in the presence of the officer.

Officers are reminded that consent to view, listen to or take possession of a recording device or media is considered a waiver of what would otherwise be a warrant requirement, and as such, the waiver must be voluntary and knowing. The method of obtaining voluntary consent may be written, audio/video recorded or verbal. However, when practical, the voluntary consent should be obtained in written or audio/video recorded form. If the consent is video recorded, it must also provide audio of the consent given.

When consent is granted, the person may withdraw their consent. If the person granting consent is not present during the search, the case investigator shall provide the person a phone number where the officer may be contacted. If the recording device and/or media are relinquished to or transmitted/uploaded to an officer not assigned to the division handling the investigation, the officer shall provide the person granting consent with the phone number to the concerned investigative division.

If the recording device and/or media are tagged as evidence, the officer shall contact the division responsible for the highest charge and notify them of the media evidence.

Warrantless Seizure Without Consent

If an officer has probable cause to believe that a recording device and/or media contain evidence, the officer shall take control of the recording device and/or media, as applicable, and contact a supervisor if both of the following apply:

- a. The individual declines to give consent as described above or the officer does not request consent.
- b. The officer believes that exigent circumstances exist insofar as the evidence will be lost, tampered with, or otherwise rendered useless absent an immediate seizure of the recording device and/or media.

The on-scene supervisor shall, in consultation with the officer, determine whether exigent circumstances permit the seizure of the recording device and/or media without a warrant.

Warrantless seizure of the recording device and/or media is permissible only when both of the following are true:

- c. There is probable cause to believe that the property holds contraband or evidence.
- d. The exigencies of the circumstances demand seizure of the property, such that there is a threat of imminent removal or destruction of evidence or threat to human life and insufficient time to obtain a warrant; or, some other recognized exception to the warrant requirement is present.

Evidence on a Recording Device or Media When Consent is Not Given

Absent exigent circumstances, officers shall obtain a search warrant before viewing images or listening to audio on a recording device and/or media that has been seized as evidence.

In exigent circumstances, where there is reason to believe that an immediate search of the seized material is necessary to prevent death or serious bodily injury of any person, officers shall contact a supervisor for authorization to review or listen to the recording device and/or media without a warrant. Recording devices and/or media that have been seized as evidence and are not directly related to the exigent purpose shall not be reviewed.



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Chief of Police